



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA USPS CERTIFIED MAIL AND E-MAIL

APR 24 2015

Stuart N. Kaplan, Esq.
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RE: MUR 6528 (Michael Grimm for Congress)

Dear Mr. Kaplan:

On February 9, 2012, the Federal Election Commission notified your client, Michael Grimm for Congress and its treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, information supplied by the Committee, and information that the Commission obtained in the normal course of carrying out its supervisory responsibilities, the Commission, on April 22, 2015, found that there is reason to believe that the Committee may have knowingly accepted reimbursed contributions and inaccurately reported the true source of those receipts in violation of 52 U.S.C. §§ 30104(b), 30116(f), and 30122 (formerly 2 U.S.C. §§ 434(b), 441a(f), and 441f).¹ The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you and your client have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

Letter to Stuart N. Kaplan, Esq.
MUR 6528 (Michael Grimm for Congress)
Page 2

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Emily Meyers, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosure
Factual and Legal Analysis

cc: Michael Grimm

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Michael Grimm for Congress and MUR: 6528
Nancy H. Watkins¹ in her official capacity
as treasurer

I. INTRODUCTION

This matter was generated by a Complaint alleging that former U.S. Representative Michael Grimm ("Grimm") and Michael Grimm for Congress ("Committee") solicited and received contributions that violated various provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). For the reasons described at greater length below, there is reason to believe that the Committee may have violated 52 U.S.C. §§ 30104(b), 30116(f), and 30122 (formerly 2 U.S.C. §§ 434(b), 441a(f), and 441f).²

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

During the 2010 election cycle, Grimm was a successful candidate for the House of Representatives for New York's 13th Congressional District. In 2014, Grimm was reelected to represent New York's 11th Congressional District. The Committee is Grimm's principal campaign committee.

The Complaint alleges, based on a *New York Times* article, that in 2010, Grimm solicited excessive, foreign national, and false-name contributions from members of the Mosdot Shuva

¹ Nancy H. Watkins replaced Robert F. Carlin as treasurer of Michael Grimm for Congress on January 9, 2015. See Michael Grimm for Congress, Statement of Org. at 1 (Jan. 9, 2015). At the time of the activity addressed in the Complaint, Wayne T. Muratore was the treasurer of the committee. See Michael Grimm for Congress, Statement of Org. at 1 (Nov. 18, 2009).

² On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

1 Israel global ministry ("Mosdot"), which had a large presence in Grimm's district.³ The
2 Complaint further alleges that, to facilitate his fundraising efforts with members of Mosdot,
3 Grimm engaged the assistance of Ofer Biton, then a top aide to Mosdot's leader, Rabbi
4 Yoshiyahu Yosef Pinto,⁴ who allegedly helped Grimm and the Committee obtain more than
5 \$500,000 from Pinto's followers.⁵ The Complaint also makes several allegations concerning the
6 making, receipt, and solicitation of excessive and foreign contributions and contributions made
7 in the names of others.

8 The Committee's Response argues that the Complaint is insufficient because it is based
9 on anonymous sources and ambiguous statements attributed to them, and because the allegations
10 made by a named source do not violate the Act or Commission regulations.⁶ Specifically, the

³ Compl. ¶ 5 (Feb. 6, 2012) (citing Alison Leigh Cowan and William K. Rashbaum, *Rabbi's Followers Cast Doubt on Congressman's Fund-Raising*, N.Y. TIMES, Jan. 28, 2012, at A1) (attached to the Complaint as Exhibit 1). The article represents that it is based on "more than 15 interviews with followers and associates of [Pinto]" and an "analysis of Mr. Grimm's campaign records." *Id.*, Ex. 1.

The article cites three anonymous sources identified as "[t]hree of the rabbi's followers." *Id.* Anonymous A was quoted (at 2) saying "near the FBI building" and "[e]very day, he used to call me, over and over"; Anonymous B was quoted (at 2) saying "Grimm wanted you to supply the money, and if someone wants to give and cannot give, you have to find a friend to give it through Let's say someone is not legal to give because he's not American. Grimm wants this guy, Joe A, to give money to Joe B so Joe B can make the contribution to the campaign"; Anonymous C was quoted (at 3) saying "I give the checks to Ofer, and he gives them to Michael." *Id.* The remainder of the information in the article is stated in the words of reporters and/or editors of *The New York Times*.

The same news report contains a denial by Grimm. Grimm was quoted (at 2 & 3) saying, "Any suggestion that I was involved in any activities that may run afoul of the campaign finance laws is categorically false and belied by my life of public service protecting and enforcing the laws of this country," and further that, "At first, I thought this was a joke because the allegations are so absurd and ridiculous But let me be very clear, the information you received is completely false and I know is unsubstantiated, thus completely unfit to print." *Id.*

⁴ Compl. ¶¶ 6, 8; *id.*, Ex. 1 at 1. Biton purportedly assisted Grimm in the hope that Grimm would help him obtain a green card if Grimm was elected. Compl. ¶ 7; *id.*, Ex. 1 at 3.

⁵ Compl., Ex. 1 at 1.

⁶ The Response also asserts that the facts alleged by the only named source — that the candidate was "together all the time during the campaign" with Ofer Biton and would "drive around [with him] . . . to the homes and offices and ask for contributions" — does not substantiate the anonymous allegations and does not constitute a violation of the Act in and of itself. Resp. at 8 (Mar. 27, 2012) (quoting Compl. ¶ 8; *id.*, Ex. 1 at 2.).

1 Response asserts that the Commission may not base a reason to believe finding on anonymous
2 sources because, without the identity of the source, the Commission lacks sufficient information
3 to weigh the credibility of the allegations, give Respondents sufficient notice of the facts at issue
4 to assess the permissibility of the contributions at issue, or investigate which contributions might
5 be implicated.⁷

6 The U.S. Department of Justice ("DOJ") commenced an investigation into the issues
7 raised here, as well as other issues.⁸ Based upon evidence obtained in that investigation, DOJ
8 filed a criminal complaint against Diana Durand, a personal friend of Grimm's and a fundraiser
9 for the Committee during the 2010-cycle campaign at issue here.⁹ A grand jury indicted Durand
10 on April 25, 2014, on three counts: (1) knowingly and willfully making more than \$2,000 in
11 excessive campaign contributions to the Committee; (2) knowingly and willfully making more
12 than \$10,000 of campaign contributions in the names of others to the Committee and another

⁷ Resp. at 2 (citing 52 U.S.C. § 30109(a)(1) (formerly 2 U.S.C. § 437g(a)(1))).

⁸ See generally Complaint and Affidavit in Support of Arrest Warrant, *United States v. Durand*, 1:13-mj-00724 (E.D.N.Y., Aug. 20, 2013) ("Criminal Complaint"); Affidavit in Support of an Application for a Search Warrant, *In re Application for Search Warrant*, 1:14-mj-078 (E.D.N.Y. Jan. 27, 2014).

On March 11, 2015, the Commission notified each Respondent that that the Commission was considering certain public records obtained from federal court records. The Commission provided to each Respondent copies of the public records and afforded each Respondent an opportunity to respond if the Respondent so chose, without any adverse inference in the event a Respondent chose not to respond. See, e.g., Letter to William McGinley RE: Michael Grimm for Congress and Nancy Watkins, Treasurer (Mar. 11, 2015). The public court records were the following: Attachment A: Minute Entry, *United States v. Grimm*, 1:14-cr-00248 (E.D.N.Y. Dec. 23, 2014) (Dkt. No. 81); Attachment B: Indictment, *United States v. Grimm*, 1:14-cr-00248 (E.D.N.Y. Apr. 25, 2014) (Dkt. No. 1); Attachment C: Factual Basis for Guilty Plea, *United States v. Grimm*, 1:14-cr-00248 (E.D.N.Y. Dec. 23, 2014) (Dkt. No. 82); Attachment D: Minute Entry, *United States v. Biton*, 1:12-cr-00580 (E.D.N.Y. Aug. 16, 2013) (Dkt. No. 63); Attachment E: Minute Entry, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Sept. 3, 2014); Attachment F: Complaint and Affidavit in Support of Arrest Warrant, *United States v. Durand*, 1:13-mj-00724 (E.D.N.Y. Aug. 20, 2013); Attachment G: Indictment, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Apr. 25, 2014) (Dkt. No. 12); Attachment H: First Motion to Unseal Document, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Jan. 23, 2015) (Dkt. No. 34); Attachment I: Affidavit in Support of an Application for a Search Warrant, *In re Application for Search Warrant*, 1:14-mj-078 (E.D.N.Y. Jan. 27, 2014).

⁹ Criminal Complaint ¶ 9.

1 federal committee; and (3) knowingly and willfully making materially false statements to the
2 FBI regarding her reimbursement of straw donors.¹⁰ On September 3, 2014, Durand pleaded
3 guilty to reimbursing more than \$10,000 in contributions made in the name of another to the
4 Committee during the 2010 election cycle.¹¹

5 As recently as January 23, 2015, DOJ represented to a federal court that its investigation
6 was open and on-going and that DOJ had identified potential witnesses with relevant
7 knowledge.¹² Further, information obtained at the Commission's direction in the normal course
8 of carrying out its supervisory responsibilities reflects that the investigation includes allegations
9 regarding the Committee's involvement in a scheme to accept contributions made in the name of
10 another.¹³

¹⁰ Indictment, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Apr. 25, 2014) ("Indictment").

¹¹ Minute Entry, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Sept. 3, 2014). Durand's Indictment states that Durand made contributions in the names of others to "Committee A and to Committee B." Indictment ¶ 9. Information in the Complaint and Affidavit in Support of Arrest Warrant for Durand and Commission disclosure reports reflects that "Committee A" is Michael Grimm for Congress. See Criminal Complaint ¶ 10 (stating that in November 2009, Durand donated \$4,800 to "Committee A"); Michael Grimm for Congress, 2009 Year End Rpt. at 21 (Jan. 30, 2010) (showing Committee's receipt of \$4,800 contribution from Durand on November 11, 2009). Durand made no other contributions to any political committee registered with the Commission in 2009.

¹² First Motion to Unseal Document at 2-4, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Jan. 23, 2015) (Dkt. No. 34) (representing that, despite Durand's guilty plea, "public disclosure of [information in DOJ search warrant] will negatively affect an on-going investigation," that it contains information "that may harm the privacy interests of potential witnesses," and that the search warrants were "evidence in a separate and ongoing criminal investigation" extending beyond Durand, such that unsealing them "may harm the fair trial rights of the suspect in that case").

¹³ See *id.*; see also Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Michael Grimm (Nov. 26, 2012) ("The Department of Justice has asked the Committee to defer consideration of" whether "Representative Michael Grimm may have violated federal campaign finance laws by soliciting and accepting prohibited campaign contributions, caused false information to be included in campaign finance reports, and improperly sought assistance from a foreign national in soliciting campaign contributions in exchange for offering to use his official position to assist that individual in obtaining a green card."); Office of the General Counsel Informational Memorandum to the Commission at 1, MUR 6528 (Mar. 10, 2015).

B. Legal Analysis

The Act prohibits contributions in the name of another, including the making or acceptance of the contribution, permitting one's name to be used to effect such a contribution, or helping or assisting any person in making a contribution in the name of another.¹⁴ The Act also prohibits making or accepting a contribution from an individual to a candidate that exceeds the limits of the Act, which for the 2010 election cycle was \$2,400 per election.¹⁵ Further the Act imposes corresponding restrictions on candidates, committees, and their agents, and proscribes the solicitation, direction, receipt, and acceptance of contributions from prohibited sources — including foreign nationals, made in the name of another, or that exceed the Act's limits.¹⁶

Commission regulations define "solicit" as "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value."¹⁷ Commission regulations define "direct" as "to guide, directly or indirectly, a person who has expressed an intent to make a contribution, donation or transfer of funds, or otherwise provide anything of value, by identifying a candidate, political committee or organization, for the receipt of such funds, or things of value."¹⁸

¹⁴ 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f); 11 C.F.R. § 110.4(b)(i)-(iii).

¹⁵ 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a).

¹⁶ *Id.* §§ 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) (prohibiting a federal officeholder, candidate, candidate committee, and its agents from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act), 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)) (prohibiting a person from soliciting, accepting, or receiving a contribution made in connection with an election from a foreign national), 30116(f) (formerly 2 U.S.C. § 441a(f)) (prohibiting a candidate, committee, and its officers or employees from knowingly accepting excessive contributions); 11 C.F.R. §§ 110.4(b)(1)(iv) (prohibiting persons from knowingly accepting a contribution made by one person in the name of another), 110.4(c)(2) (requiring a candidate or committee who receives a cash contribution in excess of \$100 to return the amount over \$100 to the contributor).

¹⁷ 11 C.F.R. § 300.2(m).

¹⁸ *Id.* § 300.2(n).

1 Finally, the Act requires political committees, through their treasurers, to file reports with
2 the Commission that accurately disclose the receipt of all contributions and the identification of
3 each person who makes a contribution aggregating more than \$200 during that election cycle.¹⁹

4 Although the Complaint asserts a number of possible violations of the Act — including
5 the making and receipt of foreign national contributions, the solicitation of excessive and
6 prohibited contributions, and related inaccuracies in the disclosure reports filed with the
7 Commission — the central allegation that spans each of them is the Committee's alleged receipt
8 of contributions made in the name of others in connection with Grimm's 2010 election cycle
9 candidacy for the House of Representatives for New York's 13th Congressional District.

10 Concerning that allegation, the available information before the Commission indicates
11 the Committee received contributions made in the name of another in support of Grimm's
12 candidacy for that office during that period. Specifically, Durand — a Committee fundraiser in
13 the 2010 election cycle²⁰ — made a sworn admission and pleaded guilty to making more than
14 \$10,000 in contributions in the names of others to the Committee while engaged in fundraising
15 activities to benefit the Committee.²¹ Further, information that the Commission has ascertained
16 in the normal course of carrying out its supervisory responsibilities reflects that DOJ has
17 identified witnesses with information sufficient to justify on-going investigation into a straw
18 donor scheme that extends beyond Durand.²²

¹⁹ See 52 U.S.C. § 30104(b)(2), (3) (formerly 2 U.S.C. § 434(b) (2), (3)).

²⁰ Durand's fundraising efforts for the Committee included "hosting and organizing a November 2009 'meet and greet' event where Durand invited individuals to meet [Grimm] and contribute to [the Committee]." Criminal Complaint ¶ 9.

²¹ Durand's Indictment ¶ 9; *see* Compl. ¶¶ 27, 35.

²² *See supra* note 13.

1 The available information supports the Complaint's allegations and provides reason to
2 believe that Michael Grimm for Congress may have knowingly accepted reimbursed
3 contributions and inaccurately reported the true source of those receipts,²³ in violation of
4 52 U.S.C. §§ 30104(b), 30116(f), and 30122 (formerly 2 U.S.C. §§ 434(b), 441a(f), and 441f).

²³ See 52 U.S.C. § 30109(a)(2) (formerly 2 U.S.C. § 437g(a)(2)) (providing that, upon a finding of reason to believe, "[t]he Commission shall make an investigation of such alleged violation, which may include a field investigation"); *see also* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (providing that "[a] 'reason to believe' finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope").